



புதுச்சேரி மாநில அரசிதழ்

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SOMMAIRES

CONTENTS

பக்கம்

Page

Page

தொழில் நீதிமன்றத் தீர்ப்புகள் ..	1196	Sentence arbitral du travail ..	1196	Award of the Labour Court ..	1196
		de tribunal.			
அரசு அறிவிப்புகள் ..	1204	Notifications du Gouvernement ..	1204	Government Notifications ..	1204
ஒப்ப அறிவிப்புகள் ..	1210	Avis d'Adjudications ..	1210	Tender notices ..	1210
ஆபத்தான நிறுவனங்கள் ..	1213	Etablissements dangereux ..	1213	Dangerous Establishments ..	1213
சாற்றறிக்கைகள் ..	1216	Annonces ..	1216	Announcements ..	1216

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 142/Lab./AIL/T/2017,
Puducherry, dated 4th October 2017)

NOTIFICATION

Whereas, the Award in I.D.(L)No. 54/2012, dated 20-7-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the Management of M/s. Sri Kannabiran Roadways, Karaikal and Thiru R. Ramayyan, Karaikal over non-settlement of service benefits has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour), that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY**

(camp Court sitting at Karaikal)

Present :Thiru G. THANENDRAN, B.COM.,M.L.,
Presiding Officer.

Thursday, the 20th day of July 2017

I.D. (L) No. 54/2012

R.Ramaiyan,
No. 37, Madhur Road,
Sethur,
Thirunallar Commune,
Karaikal.

.. Petitioner

Versus

The Management of
M/s. Kannabiran Roadways,
Karaikal.

.. Respondent.

This industrial dispute coming on 23-2-2017 before me for hearing, Thiru A. Thirumal Valavan, Counsel for the petitioner and Thiru A. Veerapandian, Counsel for the respondent management, both

remained absent and no representation having been made on their behalf, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This industrial dispute has been referred by the Government as per the G.O. Rt. No. 10/AIL/Lab./J/2011, dated 24-1-2011 for adjudicating the following:-

(a) Whether the dispute raised by Thiru R. Ramaiyan against the management of M/s. Kannabiran Roadways, Karaikal, over non-settlement of service benefits is justified or not?

(b) If justified, what relief the petitioner is entitled to?

(c) To compute the relief if any, awarded in terms of money if, it can be so computed?

The above reference originally taken on file by the District Court at Karaikal which was being functioned as Labour Court in I.D.No. 02/2011 and subsequently when this Industrial Tribunal-cum-Labour Court established in the year 2012, the case has been transferred to this Court and this case was taken on file by renumbering it in I.D.(L) No.54/2012.

2. The brief averments of the Claim Statement filed by the petitioner are as follows:-

The petitioner stated that though he had been working as "Bus Conductor" in the respondent management from 1987 to 2005, he was not brought under the Labour Beneficial Acts such as P.F. Act, E.S.I. Act and other Insurance benefits and he was not given weekly holidays, festival holidays over time work wages, wages, festival bonus and other welfare benefits provided under the various Labour Acts and when he requested the respondent management to raise his wages and to provide all other benefits provided under the Labour Act, the management shown a deaf ear to his legitimate demands and without any valid reasons or prior notice, the respondent management terminated him from service and thereafter, he had approached the respondent management with a request to pay all the benefits to him for rendering service for 18 years but, the respondent had not given any response and hence, he had requested the Labour Officer, Karaikal to enquire into the matter and to get all the benefits from the respondent transport and during the conciliation proceedings the respondent management stated that the petitioner

had not been terminated from the service and he alone left the job without intimation and he had not performed his duty in a rightful manner and hence, the conciliation ended in failure.

The petitioner further stated that though the petitioner is entitled for reinstatement with back wages he had requested only for the benefits available to him under various enactments which are in force for the service, he had rendered with the respondent for ten years and further stated that he is eligible to get 8.33% bonus and further stated that he was not terminated on the allegation of misconduct and his removal from the employment was not based on the punishment by way of disciplinary action and he has not committed mistakes while he was doing his bus Conductor work and therefore, he is very well entitled to claim all the benefits entitled to a labour such as PF, EPF and other benefits.

3. The brief averment of the counter statement filed by the respondent is as follows:-

The respondent stated that this Court has no jurisdiction to claim any gratuity under the provisions of the Payment of Gratuity Act, 1972 by way of an Industrial Dispute under the provisions of the Industrial Dispute Act before a Labour Court and if, at all the claim for gratuity was entitled, it should have been applied in the prescribed form "I" under section 8 of the Act before the Controlling Authority under Rule 19 of the Payment of Gratuity (Central) Rules, 1972 and not before a Labour Court *vide* reported judgment in the State of Punjab Vs. Labour Court, Jullander and others (55 FJR 468. 1981 (I) LLJ 354) and therefore, this Court lacks jurisdiction to entertain the claim of the alleged gratuity.

The respondent further stated that the petitioner was not employed as regular worker but, worked as acting worker in the event of leave vacancy usually given not more than 5 to 6 days in a month. Therefore, the petitioner left the job voluntarily and he has no continuous service and the claim itself is less than 10 years as the establishment itself came to be owned by 1995 only and the petitioner refused to come to work when the job was offered to him by his employer including before the Conciliation Officer, Karaikal and before this Court, the requirement or qualification to claim bonus and gratuity does not exist. Hence, the claim of gratuity does not arise.

If, the Controlling Officer refused to order gratuity, an appeal under rule 19 of the Central Payment of Gratuity Rules, 1972 alone is permissible and not a proceeding under the Industrial Disputes Act before a Labour Court. Provident funds, E.S.I. are not applicable to the petitioner as he was not in continuous service and no claims on the above grounds are sustainable. No relief can be prayed as there is no coverage of E.S.I. and Provident Fund. If, they are entitled, the tribunals set up for the specific purpose under the said Acts alone can be claimed before the competent authority set up under the respective Act and not under the Industrial Disputes Act, before a Labour Court. The claim of weakly holidays, over time salary, festival holidays, OT wages, festival bonus and other imaginary benefits are not entitled by the petitioner as he has not performed it, not in continuous service, duty time salary is paid as and when due, and even if, they are allegedly due, they are not under any contract and they are barred by limitation.

The respondent further stated that the petitioner is not the employee/worker in continuous service and not entitled to anything. The claim of benefits after voluntarily stopping to come to service, not entitled to anything when the claims are levied after 5 years. This shows lack of *bona fides*, latches and bar of limitation. Even during the leave duty/acting duty time also, he has not performed his duties perfectly and there were repeated complaints of negligence and caused loss to the respondent and they are accepted by the letters of the petitioner. While he was refusing to work when the job was offered to him without any valid reason, all the claims of the petitioner were liable to be rejected.

4. In the course of the enquiry on the side of the petitioner PW.1 was examined and no documents were exhibited and on the side of the respondent no oral evidence was let in and no documents were exhibited.

5. The point for consideration is:

Whether the dispute raised by the petitioner against the respondent management over non-settlement of service benefits is justified or not and whether the petitioner is entitled to claim any relief?

6. In this case, after the examination of the PW.1 in the enquiry he was fully cross-examined by the respondent management and subsequently, the respondent management has not produced any witness

on his side even after granting number of opportunities and hence, this Court has closed the evidence of the respondent side and posted the case for arguments, even after giving sufficient opportunities both the parties have not appeared before this Court to put-forth their arguments and that therefore, this Court has closed the arguments and posted the case for orders with a liberty to file written argument if any, but, even then no argument was filed by either side.

7. This industrial dispute is raised by the petitioner over the non-settlement of service benefits to the petitioner by the respondent management. It is the evidence of the PW.1 that the petitioner was working as a Bus Conductor in the respondent transport for the period from 1987 to 2005 and no benefit of the Labour Laws was given to the petitioner by the respondent management and he has not given weekly holidays, festival holidays over time work wages, festival bonus and other benefits provided under the various Labour Laws and since, the petitioner has requested the respondent management to raise his wages and to provide all other legal benefits provided under the various Labour Laws, without any valid reason or prior notice the petitioner was terminated from the service.

8. In support of his oral evidence, the petitioner has not at all exhibited any documents though he has filed some documents along with the claim petition. On the other hand, the respondent management has contended in the counter statement that the petitioner was not the regular employee of the respondent establishment and he was worked as a acting worker in the event of leave vacancy usually given not more than 5 or 6 days in a month and the petitioner has voluntarily left the job and he has no continuous service at any time and further, that this Court has no jurisdiction to pass any order under the Payment of Gratuity Act and no relief can be given under the Industrial Disputes Act for getting any gratuity and P.F., E.S.I. are not applicable to the petitioner as he is not in continuous service at the respondent establishment and that therefore, the petitioner is not the employee in continuous service and hence, he is not entitled for benefits of the Act.

9. Though, the petitioner has stated that he was working as Bus Conductor in the respondent establishment for the period from 1987, he has not at all filed any documents to establish that he had been in continuous service till 2005. Since, no documents were exhibited while the respondent has contended

that the petitioner employee is not a regular workman and he was only acting worker in the event of leave vacancy usually given work not more than 5 or 6 days in a month. In such circumstances, no such pay slips or ID Card given by the respondent establishment or payment of contributions of E.S.I. and P.F. have not been exhibited and filed before this Court. As a petitioner he has to establish the *prima facie* case that he was working in the respondent establishment as a regular worker from the year 1987 and was working till 2005 by exhibiting the documents but, in this case the petitioner though examined himself as PW.1 no document was exhibited on his side.

10. Further more, the petitioner PW.1 admits that he has not filed any documents to prove the fact that he had been in continuous service at the respondent establishment. The evidence of the petitioner PW.1 runs as follows:

“.....வேலையை விட்டு நின்றபிறகு எனக்கு வேலை வேண்டும் என்று கோரி நான் எந்த நடவடிக்கையும் எடுக்கவில்லை. வேலை செய்யவும் நான் எப்போதும் தயாராக இல்லை. நான் விடுப்பு எடுப்பதற்கு நான் முன்பு செய்த வேலையில் குறைபாடு உள்ளதாக மெமோ கொடுத்தார்கள். நிர்வாகம் அளிக்கும் மெமோ தேதியில் அவ்வப்போது நான் விளக்கம் கொடுத்துள்ளேன். இனி அந்த தவறுகள் நடக்காது என்று நான் விளக்கம் கொடுத்துள்ளேன். மெமோ கொடுக்கப்பட்டு அதற்கு நான் பதில் தந்த பிறகு சுமார் 3 மாதங்கள் கழித்து 15 நாட்கள் விடுப்பு எடுத்தேன். குறைபாடுகள் என்மீது உள்ளதால்தான் நான் வேலையை விட்டு நின்றவிட்டேன் என்றால் சரியல்ல. தொடர்ச்சியாக 20 வருடமாக எதிர் மனுதாரரிடம் பணிபுரிந்தேன் என்பதற்கு என்னிடம் ஆவணங்கள் இல்லை. நான் தொடர்ந்து பணி செய்யவில்லை என்று யாராவது பணியாளர்கள் விடுப்பு எடுத்தால் அந்த காலி இடத்தில் மட்டுமே நான் வேலை செய்வது வழக்கம் என்றால் தவறு. பணிக்கொடை மற்றும் வேறு எந்த தொகையும் பிடிப்பது கிடையாது. பி.எப். மற்றும் போனஸ் ஆகியவற்றை நான் கேட்கிறேன். பி.எப். தொகை நிர்வாகம் கட்டினார்களா என்று எனக்கு தெரியாது. 20 வருடத்துக்குரிய போனஸ் தொகை வரவேண்டும். போனஸ் தொகை இதுவரை குத்துமதிப்பாகத்தான் கொடுத்தார்கள். போனஸ் என்பது முழுமையாக தரவில்லை. போனஸ் என்பது நிர்ணயம் இல்லை உண்டு ஆனால் கொடுப்பதில்லை வாங்கிய சம்பளத்திற்கு நான் மெனக்கீட்டு அந்த சதவீதம் படி போனஸ் தரப்படவில்லை. போனஸ் தொகையில் பாக்கி உள்ளதாக இதுவரை கடிதம் எதுவும் எழுதி நான் கேட்கவில்லை. 20 வருடமாக போனஸ் வாங்கியதில் குறை இருப்பதாக நான் எந்த அதிகாரியிடமும் குறை கூறவில்லை ஒவ்வொரு வருடமும் அவர்கள் கொடுத்த தொகையை போனசாக வாங்கியுள்ளேன். 20 வருடமாக வாங்கியுள்ளேன்”

From the above evidence it is clear that the petitioner has admitted the fact that he has not exhibited any documents to prove the fact that he was in continuous service at the respondent establishment and further he admits that he has voluntarily left his employment from the respondent establishment and he has not asked the respondent establishment to give any job to him.

11. Further more, the petitioner has not at all exhibited any documents to prove the fact that he had been in service from the year 1987 while it is stated by the respondent management that the respondent establishment itself is started only in the year 1995 and therefore, the petitioner has failed to establish the fact that he was working as permanent employee in the respondent establishment as Bus Conductor from the year 1987 as stated by him.

12. Further more, though, the petitioner has filed the claim statement he has not at all stated the particulars of the due which is to be recovered from the respondent management in the name of P.F., E.S.I., insurance and other benefits while he admits in his evidence that he has received bonus for every year from the respondent management but, the particulars of the amount how much he has been received the bonus for every year and how much is given to him arrear of bonus has not at all stated by the petitioner and that therefore, the petitioner has utterly failed to prove his case by filing all the documentary evidence like Pay Slip, E.S.I. or ID Card or any other communication between the respondent and the petitioner workman or any other document to prove the fact that he is a permanent employee of the respondent establishment and that therefore, the dispute raised by the petitioner before the Conciliation Officer over non-settlement of dues is not justified and as such the petitioner is not entitled for any relief as claimed by him and hence, the claim petition is liable to be dismissed.

13. In the result, the petition is dismissed. No cost.

Dictated to Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 20th day of July, 2017.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 21-11-2012— R. Ramaiyan

List of petitioner's exhibits : Nil

List of respondent's witnesses : Nil

List of respondent's exhibits : Nil

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 143/Lab./AIL/T/2017, dated 4th October 2017)

NOTIFICATION

Whereas, the Award in I.D.(L)No. 12/2015, dated 17-07-2017 of the Industrial Tribunal-Cum-Labour Court, Puducherry in respect of the industrial dispute between Thiru K. Vellaiyan, S/o. Kaliavaradhan, Nettapakkam, Puducherry against the management of M/s. AML Steel Limited, Nettapakkam, Puducherry over to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits has been received.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/9/Lab./L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY**

Present : Thiru G.THANENDRAN, B.COM., M.L.,
Presiding Officer,

Monday, the 17th day of July, 2017

I.D. (L) No. 12/2015

Vellaiyan,
S/o. Kaliavaradhan,
No.30, Mariamman Koil Street,
Eripakkam;Nathamedu,
Kariyamanikkam Post,
Nettapakkam, Puducherry.

.. Petitioner

Versus

The Managing Director,
AML Steel Limited,
No.33/5, Eripakkam Village,
Nettapakkam, Puducherry.

.. Respondent.

This industrial dispute coming on 10-07-2017 before me for final hearing in the presence of Thiru R.T. Shankar, Counsel for the petitioner, Tvl. Malarvizhi Udayakumar, D. Johnsamuvel, K. Parthiban & V. Palanikumar, Counsels for the respondent, upon hearing, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This is a petition filed by the petitioner under section 2-(A) of the Industrial Disputes (Amendment) Act, 2010 praying to pass an Award directing the respondent management to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

2. *The averments in the claim statement of the petitioner, in brief, are as follows :*

The petitioner joined with respondent management in the month of May, 1996 as Office Assistant/ Attender and discharged his duties without any remarks and utmost satisfaction of the respondent till last date of employment and 300 employees have been working at the respondent establishment out of which most of the employees are North Indians and Tamils are only 10 nos. from Pondicherry and Tamil Nadu and the petitioner was paid the total salary of ₹ 1,500 and recently the management paid the salary of ₹ 4,500 per month and the petitioner requested the management for the wage increase on par with minimum wages and it was denied by the management and on 23-10-2013, the respondent management not allowed the petitioner to enter the factory and he was informed that he was terminated orally by the management and further stated that by an act of victimization and motivation the management issued an order of transfer to the petitioner to report duty at Head Office, Chennai with immediate effect and further, stated that inspite of it the petitioner reported immediately on the same day on 25-10-2013 at 12.30 p.m., as directed by the management at the Chennai Unit and also signed in the entry note maintained by the Security.

The petitioner further stated that the respondent management not allowed him to enter inside the factory and asked to sit outside the factory premises and thereafter, asked to report him on 26-10-2013 and

as instructed by the management he reported to duty on 26-10-2013 and again he was not allowed to enter the factory premises and instructed to go out by the said management and further stated that his employment was denied by the management and he was not allowed to enter the factory premises and therefore, after three days, the petitioner returned to his original work place at Puducherry unit and further stated that the management denied employment to the petitioner and not allowed him to enter the factory and therefore, the petitioner raised an industrial dispute against the respondent management over non-employment/ otherwise termination under the Industrial Disputes Act *vide* representation, dated 3-12-2013.

The petitioner further stated that the respondent management by an act of victimization and motivation denied employment as the petitioner requested for the salary increase and implement as it was not paid and bonus was also not paid to him and further stated that out of 300 employees only 10 employees were on roll and other employees were engaged on contract system against the Contract Act and all the said employees more than 280 workmen belongs to North India and further stated that the respondent management so far not extend the benefit of ESI and EPF to their workmen and also so far the management have not extended the benefit of leave salary, over time allowances, weekly holiday, bonus, *etc.*, which are statutory benefits under the Social Security Acts and that the respondent management not maintaining any records such as attendance register, wage register, leave register, *etc.*, to their workmen and that all the workmen including the petitioner working for more than 12 hours per day and no allowances were paid under the Act.

The petitioner further stated that during the conciliation proceedings the respondent management eventhough participated not extended their co-operation and not submitted the records such as attendance register, wage register, bonus register, over time register to the conciliation machinery and the respondent management not submitted any reply in this regard and also failed to submit valid reason for denial of employment of the petitioner and during conciliation proceedings the Conciliation Officer was advised the respondent management to provide employment to the petitioner as there is no valid reason for denial of employment and it was against the principles of natural justice and Industrial Disputes Act. But, the same was ended in vain and further stated that the respondent management has no

right to transfer the petitioner to different regions and hence, the transfer order issued by the respondent management is arbitrary and illegal one and also against the Industrial Disputes Act, 1947 and therefore, the said transfer order is liable to be set-aside and subsequently the refusal of employment to the petitioner is illegal and unlawful one and that the act of the respondent management is attracted an unfair labour practice under the fifth schedule, Item No.7 of Industrial Disputes Act, 1947 and therefore, the respondent management found guilty by adopting the said clause and the respondent management abruptly, absolutely accountable to be prosecuted under law in accordance with provision of Industrial Disputes Act, 1947 and further, that the petitioner had also approached the Labour Officer-Conciliation, at Puducherry on 3-12-2013 but, within the period of 45 days, there is no amicable settlement arrived and therefore, as per the Amended Act (24 of 2010), the petitioner is constrained to file this petition before this Court and prayed for reinstatement with full back wages, continuity of service and all other attendance benefits.

3. *The brief averments in the counter filed by the respondent are as follows :*

The respondent denied the averments made by the petitioner in the claim petition except those that are specifically admitted by them in the counter statement and stated that the petitioner has been working in the company since 1996 and during October, 2013 as there was a shortage of staff in the Head Office, Chennai-86 the petitioner being an experienced person was transferred to the Head Office and communication was sent to the petitioner on 25-10-2013 informing him that he is transferred to the Head Office AML Tower, No. 9, 6th Street, Gopalapuram, Chennai-600 086 due to administrative reasons and he was granted one week time with pay for reporting to new station and further stated that the petitioner though acknowledged their letter on 25-10-2013 failed to report within the time granted and did not sent any communication, which resulted in a lot of confusion and hence, the respondent was forced to issue a show cause notice, dated 20-11-2013 directing the petitioner to join duty immediately failing which disciplinary action would be initiated for disobedience and no reply was submitted to the respondent for the show cause notice and instead, the petitioner went directly to the Labour Officer, Labour Department, Puducherry on 3-12-2013 with false particulars that work was not given and not allotted and further stated that the petitioner was not

satisfied with the working condition he would not have continued to work for 17 long years and proper records and Register has been maintained and thus, it is not wrong to transfer a workman, if there is a need by the management and that this cannot be construed to be *mala fide* and there has been no violation any provisions of Industrial Disputes Act, 1947 and prayed this Court to dismiss the claim petition.

4. In the course of enquiry on the side of the petitioner WW.1 was examined and Ex.W1 to Ex.W8 were marked and on the side of the respondent though the case was adjourned for several hearings, the respondent has not turned up and no witness was produced by the respondent and no documents were marked by them.

5. *The point for consideration is:*

Whether the petitioner is entitled for the Order of reinstatement with back wages, continuity of service and all other attendant benefits or not?

6. The argument was heard. The learned Counsel appearing for the petitioner has argued that they have established through oral and documentary evidence that the petitioner was working at the respondent establishment for about 15 years as an Office Assistant/Attender and he was transferred by the respondent management with a direction to report before the Head Office AML Tower, No.9, 6th Street, Gopalapuram, Chennai - 600 086 and as per the Order, the petitioner has appeared on 25-10-2013 at the respondent Head Office at Chennai wherein, the signature of the petitioner was obtained and the petitioner was asked to sit outside the factory and thereafter, the petitioner was asked to report on the next day i.e., 26-10-2013 and on which date also the petitioner was refused to enter into the factory premises and after three days the petitioner returned to the factory from which he was transferred wherein, also the petitioner was refused to enter the factory by the respondent management and that therefore, he has raised the industrial dispute before the Conciliation Officer. On the side of the respondent though several opportunities were given to putforth their case no argument was putforth by the respondent and hence, with no other option the argument of the respondent was closed.

7. On careful perusal of claim statement filed by the petitioner and counter statement filed by the respondent management it is clear that following facts are admitted by both the parties that the petitioner was working at the respondent establishment from the year 1996 and

he was transferred to the Head Office at Chennai by the respondent management on 25-10-2013 and he was granted one week time with pay for reporting at the new station and a show cause notice was issued to him on 20-11-2013 and the petitioner has raised the industrial dispute before the Conciliation Officer on 3-12-2013.

8. It is the evidence of the petitioner WW.1 that he had been in service at the respondent establishment as an Office Attender from May, 1996 and working for about 17 years without any remarks and he has been granted only ₹ 4,500 as salary by the respondent management even he has completed 17 years of service at the respondent office as an Office Assistant and he has requested for wage increase for which the management has denied to pay even the minimum wages to the petitioner and has started all sort of unfair labour practice against the petitioner and he was transferred by the respondent management by an Order dated 25-10-2013 to the Head Office at Chennai with immediate effect and though he has reported immediately on the same day on 25-10-2013 at the respondent Head Office at Chennai and also signed in the entry note maintained by the Security, the management has not allowed him to enter inside the factory and directed him to report on 26-10-2013 and though the petitioner has reported as directed by the respondent management on 26-10-2013 again the petitioner was not allowed to enter the factory premises and was instructed to go out the factory and thereafter, he has returned to the original work place at Puducherry wherein, the respondent management has denied employment to him by not allowing him to enter the factory and that therefore, he raised an industrial dispute before the Conciliation Officer against the respondent management.

9. In Order to establish the case, the petitioner has exhibited the copy of the letter of Transfer Order given by the respondent to the petitioner on 25-10-2013 as Ex.W1, the letter of notice given by the respondent to the petitioner on 20-11-2013 as Ex.W2, the dispute raised by the petitioner before the Labour Officer (Conciliation) on 03-12-2013 as Ex.W3, the letter given by the petitioner before the Labour Officer (Conciliation) on 01-07-2014 as Ex.W4, the failure report submitted by the Labour Officer - Conciliation, Puducherry on 01-12-2014 as Ex.W5, the experience letter given by the respondent to the petitioner on 30-04-2013 as Ex.W6, the copy of the ESIC Card given by Employee's State Insurance Corporation to the petitioner on 01-12-2003 as Ex.W7, the copy of the EPF slip given by the Employee's Provident Fund to the petitioner for

various financial years of 2001-2002, 2005-2006 and 2006-2007. These documents would go to show that the petitioner was working at the respondent management from May, 1996 and he was working for about 17 years and he has been transferred by the respondent management on 25-10-2013 to Chennai Head Office and subsequently on 20-11-2013, he was directed to report before the respondent management at Chennai and thereafter, he has raised the industrial dispute before the conciliation on 03-12-2013 and the conciliation was failed and the reference has been sent to this Court and while he was in employment at the respondent establishment he has been paid ESI contribution by the respondent management and also given ESCC Card and he has also been paid EPF for the financial year 2001-2002, 2005-2006 and 2006-2007.

10. Admittedly the petitioner has been transferred from Puducherry to Chennai Head Office on 25-10-2013 and it is the case of the petitioner that he appeared on 25-10-2013 at the respondent Head Office at Chennai as directed by the respondent management under the Transfer Order, but, he has not been allowed to enter the factory and he has been asked to appear on the next day on which day also he was not allowed to enter into the factory and hence, he has returned to the original working place at Puducherry wherein, also he has denied employment. On the other hand, it is the contention of the respondent management that the petitioner has not appeared before the respondent office at Chennai as per the Order of transfer, dated 25-10-2013 and that therefore, he has been given show cause notice on 20-11-2013 to report before the respondent Head Office at Chennai and due to the administrative reason alone he has been transferred for which he has not obeyed and that therefore, he is not entitled for the Order of reinstatement.

11. It is not the case of the respondent management that they have initiated any disciplinary proceedings against the petitioner workman for the non-appearance at the Head Office as per the Transfer Order and a charge memo was served on him and an Enquiry Officer was appointed and the Enquiry Officer filed any report before the respondent management finding any guilty against the petitioner workman and therefore, he has been terminated from service on the finding of the Enquiry Officer. As the petitioner is the permanent workman of the factory since he has served as an Attender at the respondent management for about 17 years, it is the duty cast upon the respondent to adopt procedure laid down under the labour laws and the opportunity ought to have been given to the petitioner workman to defend his case by conducting domestic enquiry for his non-appearance at the

respondent Head Office at Chennai as directed by them and to conduct the domestic enquiry by an Enquiry Officer by taking evidence and marking exhibits by giving opportunity to the petitioner to defend his case. But, in this case nothing is done by the respondent management for terminating the petitioner workman from the respondent establishment and that therefore, the refusal of employment to the petitioner without adopting any proper steps in accordance with law by following the principles of natural justice which would go to show that the respondent management has committed unfair labour practice as stated by the petitioner and that therefore, the industrial dispute raised by the petitioner against the respondent management over his non-employment is justified and the petition is liable to be allowed and the petitioner is entitled for the Order of reinstatement as claimed by him.

12. As this Court has decided that the industrial dispute raised by the petitioner against the respondent management over his non-employment is justified, it is to be decided whether the petitioner is entitled for back wages with continuity of service as claimed by the petitioner. In Judgment reported in U.P. State Brassware Corporation Ltd., Vs. Uday Narain Pandey (supra), wherein, the Hon'ble Bench has observed that:

"26. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be -granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of section 6-N of the U.P. Industrial Dispute Act.

27. The Court also reiterated the rule that the workman is required to plead and *prima facie* prove that he was not gainfully employed during the intervening period".

And that therefore, in the light of the above observation it is clear that the petitioner has to prove the fact that he has not employed gainfully during the intervening period. But, in this case, nothing is before this Court that the petitioner was not working anywhere else and that therefore, he cannot be given full back wages. However, it is not the case of the respondent that the petitioner is working anywhere else and hence, considering all the above facts and circumstances and the above foregoing reasons, this Court finds that the petitioner is entitled for only part of backwages and hence, this Court tentatively fix that the petitioner is entitled only for 50% back wages with continuity of service and other attendant benefits.

13. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner over the non-employment is justified and an Award is passed by directing the respondent to reinstate the petitioner within one month from the date of this Order and to pay 50% back wages from the date of termination till the date of reinstatement with continuity of service and other attendant benefits. No cost.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 17th day of July, 2017.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum
Labour Court, Puducherry.

List of petitioner's witnesses:

WW.1 —01-02-2016 K. Vellaiyan

List of petitioner's exhibits:

- Ex.W1 — 25-10-2013 Letter of Transfer Order given by the respondent to the petitioner.
- Ex.W2 — 20-11-2013 Letter of notice given by the respondent to the petitioner.
- Ex.W3 — 03-12-2013 Dispute raised by the petitioner before the Labour Officer (Conciliation).
- Ex.W4 — 01-07-2014 Letter given by the petitioner before the Labour Officer (Conciliation).
- Ex.W5 — 01-12-2014 Failure report submitted by the Labour Officer-Conciliation, Puducherry.
- Ex.W6 — 30-04-2013 Experience letter given by the respondent to the petitioner.
- Ex.W7 — 01-12-2003 Photocopy of the ESIC Card given by Employee's State Insurance Corporation to the petitioner.
- Ex.W8 — Several dates photocopy of the EPF slip given by the Employee's Provident Fund to the petitioner for various financial years of 2001-2002, 2005-2006 and 2006-2007.

List of respondent's witnesses: Nil

List of respondent's exhibits : Nil

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum
Labour Court, Puducherry.